

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
TE/GE EO Examinations
1100 Commerce St.
Dallas, Texas 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: July 23, 2010

Number: **201040025**
Release Date: 10/8/2010

Form Number:

Tax Years Ended:

LEGEND

ORG = Organization name

XX = Date Address = address

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

ORG

ADDRESS

Employee Telephone Number:

(Phone)

(Fax)

Last Date to Respond to this Letter:

CERTIFIED MAIL -RETURN RECEIPT REQUESTED

Dear ,

This is a final adverse determination regarding your exempt status under section 501 (c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated June 12, 20XX is hereby revoked and you are no longer exempt under section 501 (a) of the Code effective January 1, 20XX.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

You are not operated exclusively for charitable, educational, or other exempt purposes as required in § 501 (c)(3). You did not engage primarily in activities which accomplish one or more of the exempt purposes specified in § 501 (c)(3) and Treas. Reg. § 1.501 (c)(3)-1 (c)(1). More than an insubstantial part of your activities were in furtherance of a non-exempt purpose. You also operated for the benefit of private interests. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending [date], and for all tax years thereafter in accordance with the instructions of the return

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892.

You may write to the United States Tax Court at the address below:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

See the enclosed Notice 1546, Taxpayer Advocate Service -Your Voice at the IRS, for Taxpayer Advocate telephone numbers and addresses.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,
Sarah H. Ingram
Commissioner By

Nanette M. Downing
Acting Director,
EO Examinations

Enclosures:
Publication 892
Publication 1546
Notice 437

Internal Revenue Service

Department of the Treasury
55 N. Robinson MC 4900 OKC
Oklahoma City, OK 73102

Date: March 6, 2009

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Sunita Lough
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

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| Form 886A | Department of the Treasury - Internal Revenue Service Explanation of Items | Schedule No. or Exhibit |
| Name of Taxpayer ORG | | Year/Period Ended December 31, 20XX |

LEGEND

ORG = Organization name XX = Date Address = address City = city
State = state CO-1, CO-2 & Co-3 = 1st, 2nd & 3rd COMPANIES

TAX YEARS ENDING DECEMBER 31, 20XX, 20XX, and 20XX

Issues

1. Whether ORG is operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3):

a. Whether ORG is engaged primarily in activities that accomplish an exempt purpose?

b. Whether more than an insubstantial part of ORG activities are in furtherance of a non-exempt purpose?

Facts¹

Background

ORG was incorporated under the laws of the State of State as a non-stock, nonprofit corporation on September 24, 20XX. In a determination letter dated June 12, 20XX, ORG was determined to be exempt from federal income tax as an organization described in IRC Section 501(c)(3). ORG is located at Address – City, State.

In its Articles of Incorporation, ORG stated its purpose is “to assist needy debtors in improving their finances through educating them as to better means of managing their money and seeking from them, if appropriate, an extension or other reorganization of their debts.”

ORG was founded by President who had formerly been an employee of another organization, CO-1 which provided the same services as ORG.

* * * *

¹ Any use of the term, “contributions,” in the FACTS section of this report shall not be misconstrued as an agreement by the IRS that the receipts so labeled are actually contributions. The term is commonly used by the industry to describe what are otherwise fees in consideration for services performed. Similarly, any use of the term, “counseling” (or “counselor”), in the FACTS section of this report shall not be misconstrued as an agreement by the IRS that the service (or person) so labeled is actually counseling (or a counselor). The term, “counseling” is commonly used by the industry to describe what is otherwise a session that is primarily oriented toward the selling of DMPs and other products. Similarly, the term, “counselor” is commonly used by the industry to describe what is otherwise a salesperson, facilitator or telephone operator whose goal is to either make a sale or to provide the DMP service.

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ORG filed Form 990 for tax years ending December 31, 20XX and 20XX. At the time of exam the Internal Revenue Service does not have record of ORG filing Form 990 for tax year ending December 31, 20XX.

List of Officers, Directors, Trustees, and Key Employees

| TAX YEAR | NAME | TITLE | COMPENSATION |
|----------|-----------|------------------------|--------------|
| 20XX | President | President | \$ |
| | DIR-1 | IT Director | \$ |
| | DIR-2 | Director of Education | \$ |
| | DIR-3 | Director of Operations | |
| 20XX | President | President | -0- |
| | DIR-1 | IT-Director | -0- |
| | DIR-2 | Director of Education | -0- |
| | DIR-3 | Director of Operations | -0- |

Reported Financial Information

Reported revenue and expenses on Form 990 were as follows:

| Revenue | | 20XX | 20XX | 20XX |
|----------------|--|------|------|------|
| | Contributions, gifts, grants, and similar amounts received | | \$ | -0- |
| | Program Service Revenue | \$ | -0- | |
| | Fair Share | | | |
| | Initial Contribution | | | |
| | Monthly Contribution | | | |
| | Other Contributions | | | |
| Total Revenue | | \$ | \$ | -0- |
| Expenses | | | | |
| | Program Services | \$ | \$ | |
| | Management & General | \$ | \$ | |
| | Fundraising | | | |
| | Other Expenses | | | |
| TOTAL EXPENSES | | \$ | \$ | -0- |

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* Sources of support determined to be from debt management plans, fair share payments & monthly fees. These sources of revenue have been incorrectly categorized as contributions by ORG on Form 990.

Assets reported on the Forms 990 are as follows:

| Assets | | End of 20XX | End of 20XX | End of 20XX |
|--------------|---|-------------|-------------|-------------|
| | Cash – non-interest bearing | | | |
| | Cash – Savings and temporary cash investments | | | |
| | Prepaid expenses and deferred charges | | | |
| | Land, buildings, and equipment Less: Accumulated depreciation (attach schedule) | | | |
| | Other | | | |
| Total Assets | | | | |

Liabilities reported of Forms 990 are as follows:

| Liabilities | | End of 20XX | End of 20XX | End of 20XX |
|-------------------|--|-------------|-------------|-------------|
| | Accounts Payable and accrued expenses | | | |
| | Mortgages and other notes payable (attach schedule) ** | | | |
| | Other | | | |
| Total Liabilities | | | | |

** Promissory Note received from CO-2 to provide working capital.

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On October 14, 20XX, ORG filed petitions for relief under Chapter 11 of the federal bankruptcy laws in the United States Bankruptcy Court for the Southern District of State.

At December 31, 20XX, ORG had a working capital deficit of approximately \$ and net asset deficit of approximately \$. These factors may indicate that the Organization will be unable to continue as a going concern for a reasonable period of time.

ORG continuation as a going concern is dependent upon its ability to generate sufficient cash flow to meet its obligations on a timely basis, the continued forbearance of the third party lead generator and processing center, and ultimately produce more revenues than expenses.

Activity Description

The primary activity engaged in by ORG during the years 20XX, 20XX and 20XX is the telephone solicitation of clients to enroll in debt management plans (hereinafter DMPs).

Description of Debt Management Program (DMP's)

Potential clients come to ORG from leads purchased from CO-3 or the Web Site. Potential clients are individuals with unsecured debt. A DMP is a plan whereby a client makes monthly payments to ORG to satisfy his/her unsecured debts over a 3-5 year period. Most of the debts handled in a DMP were credit card debts, but other unsecured debts were also included in some DMPs. The monthly payment made by the client would include the payments to each creditor, plus a "voluntary" processing fee. The processing fee varied depending on the number of creditors, from \$ per account or a maximum of \$ (whichever comes first) per month. In addition, the total first month's payment did not go to creditors, but was treated as a "contribution" to ORG. ORG also solicits "fair share" contributions from credit card companies. The term "fair share" refers to a payment made by the credit card companies who are receiving payments pursuant to a DMP. Typically, credit card companies pay a fair share, which is a stated percentage of debt, to credit counseling organizations that set up DMPs; the amount paid is determined by each creditor in advance. Credit card companies will only make "fair share" payments to organizations recognized as exempt under section 501(C)(3) of the Internal Revenue Code.

Operations

ORG employed approximately 5 persons who purportedly operated as "counselors." (hereinafter referred to as employees). ORG operated as a call center, whose purpose was to enroll clients in debt management plans. ORG contacted potential clients by purchasing leads and calling those individuals. It also received calls from potential clients responding to advertising such as websites. All contacts with clients were by phone or fax. A minimal number of contacts, if any, were made through "walk-ins".

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ORG contracts with a third party lead generation service to identify potential financially distressed debtors who may need its services. Contact with a potential client would be made by telephone. During the phone call, the employee would follow a written job script designed to enroll the potential client in a DMP.

In a typical call to a potential client, the employees introduce themselves as employees of ORG, a non-profit corporation, and advised that they are calling in response to the prospect's request for help with paying debts. Employees begin by telling prospective clients that ORG negotiates with prospective client's creditors to reduce interest rates, stop late and over the limit penalties, and possibly reduce client's monthly payments. Client's are advised that instead of paying individual creditors, they only have to write one check to ORG and that ORG will pay creditors at the lowest rates, normally with no penalties. They further advise that the program will pay the potential client's debts off faster and save thousands in interest.

Employee's would ask potential clients for information regarding income and expenses, and what current unsecured debt that individual had. The employee would then prepare a "Client" Information Worksheet" which contained name, address, etc, a list of all debts to be covered by the plan, and a "budget worksheet."

Employees would go down the list by creditor name, credit type (credit card/auto loan, secured/unsecured), total debt, current or late and ask clients how much income they have coming in each month, how much their living expenses are (rent/utilities/telephone/food/etc) and how much is left that can be used to pay bills. Employees write down the answers to the income and expense questions on forms which are called "Budget Worksheets." Employees e-mail an "Agreement Document" and an "Authorization to Release Information" document to the client to complete and fax back to the employee. Employees insisted because of the negotiation period and potential clients compounding interest rates, it is important that client return information as soon as possible.

Employees were monitored and critiqued on fully pre-qualifying the consumer, following the script, explaining contributions and fees, explanation of effects on credit, going over the impact of high interest rates and whether or not the client was transferred to tutorial line.

After an agreement was secured ORG would negotiate repayment plans with creditors on clients behalf. The negotiated payment plans are managed by a third party processing center that receives periodic payments from debtors in ORG's name and remit payments to its creditors.

Although ORG states that it was engaged in some educational and counseling activities such as providing free seminars on money management and providing free materials for those wishing to learn more about handling finances, ORG primary activity lies within its "operations" or its "program": selling and maintaining DMPs. ORG was primarily a DMP call center and a production line moving away from face-to-face sessions to more emphasis on telephone and internet operations. Of the total

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revenues, were derived from DMPs. Cost centers, payroll, and capital expenditures focus on the DMP operation. Of primary concern to management was expanding and maintaining its DMP portfolio, and increasing the revenues derived from that portfolio. Key performance statistics revolve around the DMP.

Law

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c)(3) is exempt from income tax. Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual. The term charitable includes relief of the poor and distressed. Section 1.501(c)(3)-1(d)(2), Income Tax Regulations.

The term educational includes (a) instruction or training of the individual for the purpose of improving or developing his capabilities and (b) instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3). In other words, the two components of education are public education and individual training.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945).

Regulation section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. The words "private shareholder or individual" refer to persons having a personal and private interest in the activities of the organization. The term "private shareholder or individual" is defined in regulation section 1.501(a)-1(c).

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it

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is not organized or operated for the benefit of private interests such as the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Educational purposes include instruction or training of the individual for the purpose of improving or developing his capabilities and instruction of the public on useful and beneficial subjects. Treas. Reg. § 1.501(c)(3)-1(d)(3). In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analyses of securities and industries and of the economic climate in general. The organization sold subscriptions to various periodicals and services providing advice for purchases of individual securities. Although the court noted that education is a broad concept, and assumed for the sake of argument that the organization had an educational purpose, it held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and was not entitled to be regarded as exempt.

An organization must establish that it serves a public rather than a private interest and "that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Prohibited private interests include those of unrelated third parties as well as insiders. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; fruit; privilege; gain; [or] interest." Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

An organization formed to educate people in Hawaii in the theory and practice of "est" was determined by the Tax Court to be a part of a "franchise system which is operated for private benefit," and, therefore, should not be recognized as exempt under section 501(c)(3) of the Code. est of Hawaii v. Commissioner, 71 T.C. 1067, 1080 (1979). Although the organization was not formally controlled by the same individuals who controlled the for-profit entity that owned the license to the "est" body of knowledge, publications, and methods, the for-profit entity exerted considerable control over the applicant's activities by setting pricing, the number and frequency of different kinds of seminars and training, and providing the trainers and management personnel who are responsible to it in addition to setting price for the training. The court stated that the fact that the organization's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit entities were trading on that status. The question for the court was not whether the payments made to the for-profit were excessive, but whether the for-profit entity benefited substantially from the operation of the organization. The court determined that there was a substantial private benefit because the organization "was simply the

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instrument to subsidize the for-profit corporations and not vice versa and had no life independent of those corporations.”

The Service has issued two rulings holding credit counseling organizations to be tax exempt. Rev. Rul. 65-299, 1965-2 C.B. 165, granted exemption to a 501(c)(4) organization whose purpose was to assist families and individuals with financial problems and to help reduce the incidence of personal bankruptcy. Its primary activity appears to have been meeting with people in financial difficulties to “analyze the specific problems involved and counsel on the payment of their debts.” The organization also advised applicants on probation and payment of debts, negotiated with creditors and set up debt repayment plans. It did not restrict its services to the needy. It made no charge for the counseling services, indicating they were separate from the debt repayment arrangements. It made “a nominal charge” for monthly prorating services to cover postage and supplies. For financial support, it relied upon voluntary contributions from local businesses, lending agencies, and labor unions.

Rev. Rul. 69-441, 1969-2 C.B. 115, granted 501(c)(3) status to an organization with two functions: it educated the public on personal money management, using films, speakers, and publications, and provided individual counseling to “low-income individuals and families.” As part of its counseling, it established budget plans, i.e., debt management plans, for some of its clients. The debt management services were provided without charge. The organization was supported by contributions primarily from creditors. By virtue of aiding low income people, without charge, as well as providing education to the public, the organization qualified for section 501(c)(3) status.

In the case of Consumer Credit Counseling Service of Alabama, Inc. v. U.S., 44 A.F.T.R.2d 78-5052 (D.D.C. 1978), the District Court for the District of Columbia held that a credit counseling organization qualified as charitable and educational under section 501(c)(3). It fulfilled charitable purposes by educating the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b). For this, it charged no fee. The court found that the counseling programs were also educational and charitable; the debt management and creditor intercession activities were “an integral part” of the agencies’ counseling function and thus were charitable and educational. Even if this were not the case, the court viewed the debt management and creditor intercession activities as incidental to the agencies’ principal functions, as only approximately 12 percent of the counselors’ time was applied to debt management programs and the charge for the service was “nominal.” The court also considered the facts that the agency was publicly supported and that it had a board dominated by members of the general public as factors indicating a charitable operation. See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts and legal analysis were virtually identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, discussed immediately above.

The organizations included in the above decision waived the monthly fees when the payments would work a financial hardship. The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather

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than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way.

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax-exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

Internal Revenue Code section 501(c)(3) specifies that an exempt organization described therein is one in which "no part of the net of earnings inures to the benefit of any private shareholder or individual." The words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization. Treas. Reg. § 1.501(a)-1(c). The inurement prohibition provision "is designed to prevent the siphoning of charitable receipts to insiders of the charity" United Cancer Council v. Commissioner, 165 F.3d 1173 (7th Cir. 1999). Reasonable compensation does not constitute inurement. Birmingham Business College v. Commissioner, 276 F.2d 476, 480 (5th Cir. 1960).

Where an organization provided a source of credit to companies of which a private shareholder was either an employee or an owner, the court found that a portion of the organization's net earnings inured to the benefit of that private shareholder. Easter House v. United States, 12 Cl. Ct. 476 (1987). That such loans were made showed that the companies controlled by the private shareholder had a "source of loan credit" in the organization.

In Founding Church of Scientology v. United States, 412 F. 2d 1197 (Ct. Cl. 1969) the court stated that loans to an organization's founder or substantial contributor can constitute inurement that is prohibited under section 501(c)(3). In that case, the church made loans to its founder and his family and failed to produce documentation that demonstrated that the loans were advantageous to the church. The church also failed to produce documentation to show that the loans were repaid. Significantly, the court stated that "the very existence of private source of loan credit from an organization's earnings may itself amount to inurement of benefit."

IRC § 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

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Taxpayer Position

The exempt organization's position has not been determined.

Governments Position

The purpose of ORG activities differs substantially from those of the organizations in Rev. Rul. 65-299, Rev. Rul. 69-441, and Consumer Credit Counseling Service of Alabama, Inc. v. U.S. In this case, ORG engages in minimal activities which further an exempt purpose. Its "counseling" activity is nothing more than a sales activity; ORG markets and sells DMPs to any consumer. There is no actual counseling provided to consumers who contact, or are contacted by, ORG. Counselors followed a sales script emphasizing DMP enrollment. Counselors were monitored and critiqued on fully pre-qualifying potential clients. Employees were rated not on the ability to provide good counseling services to clients, but on their ability to sell DMPs. No meaningful education or counseling could take place on a telephone call. There was no structure set up to allow potential clients to have a face to face meeting with an employee for the purpose of learning money management skills or any other kind of counseling. Unlike the credit counseling organizations described in the Revenue Rulings referred to above, and in Consumer Credit Counseling Service of Alabama, Inc. v. U.S., ORG provides no counseling or education to its clients.

ORG has a substantial non exempt purpose of selling a product, the DMP. ORG is not furthering any charitable or educational purpose when it mass markets a DMP. ORG advertises and purchases leads in order to increase its business. Its employees were compensated based on the amount of business they brought in.

If ORG were for-profit, federal law would prohibit it from purchasing leads and making cold calls to potential customers.

ORG is operated for a substantial non-exempt purpose, that of carrying on a business. In addition, ORG could not collect "fair share" payments from creditors if it did not have exempt status. The entire DMP business depends on an organization having tax-exempt status.

Conclusion

The IRC §501(c)(3) tax exempt status of ORG should be revoked because it is not operated exclusively for tax exempt purposes.

Providing a program for consolidation of debt payments with lower interest rates for clients and a convenient debt collection service for creditors are not inherently charitable and educational activities in and of themselves. The debt management program provided by the company was not incidental to a

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primary educational program. Rather the educational program is incidental to the primary purpose of operating a debt management service.

In *Better Business Bureau*, in spite of good intentions, the organization did not qualify for exemption under IRC 501(c)(3) because of a substantial nonexempt purpose. ORG's heavy reliance on an automated call center, its purchasing leads and referrals tend to demonstrate that ORG has the substantial non-exempt purpose of providing a debt collection service for creditors and a bill paying services for its clients. This operation is clearly distinguished from that described in *Consumer Credit Counseling Service of Alabama* since the primary purpose appears to be maximizing the number of people enrolled in the debt management plan rather than educating them.

Given the nature of the DMPs described above, ORG's exempt status should be revoked due to its operation for the substantial nonexempt purpose of providing a debt collection and bill paying service effective January 1, 20XX.

Form 1120 U.S. Corporation Income Tax Return should be filed for tax years ending December 31, 20XX, December 31, 20XX and December 31, 20XX. Subsequent returns are due no later than the 15th day of the 3rd month following the close of the organization's accounting period. For tax year ending December 31, 20XX Form 1120 is due March 15, 20XX.